



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,957	10/20/2000	John Edward Archibald JR.	SJO9-2000-0056US1	6420

22865 7590 09/30/2002

ALTERA LAW GROUP, LLC  
6500 CITY WEST PARKWAY  
SUITE 100  
MINNEAPOLIS, MN 55344-7704

EXAMINER

THAI, TUAN V

ART UNIT	PAPER NUMBER
----------	--------------

2186

DATE MAILED: 09/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/692,957

Applicant(s)

ARCHIBALD ET AL.

Examiner

Tuan V. Thai

Art Unit

2186

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 February 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 20-22 is/are rejected.
- 7) ☒ Claim(s) 16-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_\_

Serial Number: 09/692,957

Art Unit: 2186

### **Part III     DETAILED ACTION**

#### ***Specification***

1.    Claims 1-22 are presented for examination.
2.    Applicant is reminded of the duty to fully disclose information under 37 CFR 1.56.

#### ***Claim Rejections - 35 USC § 102***

3.    The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4.    Claims 1-15 and 20-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller et al. (USPN: 6,397,351); hereinafter Miller;

As per claims 1, 6 and 11, Miller discloses the data storage system, comprising a host computer system (e.g. see figure 1); a

Serial Number: 09/692,957

Art Unit: 2186

first set of storage volumes and a second set of storage volumes for backing-up data from the first set of storage volumes is taught by Miller as being illustrated at column 5, line 31 bridging column 6, lines 9, especially through the concept of internal/ external backup wherein Miller clearly discloses the external backups may reside on the storage 112, at a remote site, or on another location that is physically separate from the storage 112 (e.g. see figure 1); a controller for controlling the transfer of data from the host system to the first and second set of storage volumes, wherein at least the first set of storage volumes further comprises data recording media including a plurality of extended format sectors, the extended format sectors comprising a user data sector field for storing user data and a backup indicator field for indicating the status of the user data sector field is taught as controller 108 which uses metadata 116 including the backup list 120, pointer set list 122, accumulator indicator 123, and update map 121 wherein the update map 121 may comprise a bit map, where each bit represents one subpart of the backup dataset, and the status of that bit indicates whether the change accumulator 130 contains any updates affecting that subpart. The change accumulator indicator 123 tells whether the backup restoration process is currently applying any change

Serial Number: 09/692,957

Art Unit: 2186

accumulator data to restored backup data; for example, the indicator 123 may comprise a flag such as a storage bit (e.g. see column 7, lines 49 et seq.); noting that the further limitation of a magnetic storage medium having servo information ...sectors; a motor and a head assembly having at least one read head for reading and writing data on the a plurality of extended format sectors is embedded in the system of Miller and being taught to the extent that it is being claimed since different machine-readable data storage media can be utilized such as magnetic disk, RAID arrays, etc.. (e.g. see column 5, lines 14 et seq.);

As per claims 2, 7 and 12, wherein the backup indicator field indicates whether the user data in the user data sector field has been written to backup storage subsequent to a previous backup operation is taught by Miller as the update map 121 may comprise a bit map wherein each bit represents one subpart of the backup dataset, and the status of that bit indicates whether the change accumulator 130 contains any updates affecting that subpart (e.g. see column 7, lines 49 et seq.);

As per claim 3, 8 and 13 wherein the backup indicator comprises a single bit is taught by Miller as the indicator 123 may comprise a flag such as a storage bit (e.g. see column 7, lines 56-57);

Serial Number: 09/692,957

Art Unit: 2186

As per claim 4, 9 and 14; Miller discloses the log record is sorted according to the datasets that each log record corresponds to then by attributes such as data, time, .. within each dataset (e.g. see column 8, lines 34 et seq.);

As per claims 5, 10 and 15; Miller discloses wherein the backup indicator indicates whether the user data sector field has been written to (e.g. see column 7, lines 49 et seq.);

As per claims 20-22, they encompass the same scope of invention as to that of claims 1-5, 6-10 and 11-15 except they are drafted as method format rather than apparatus format, the claims are therefore rejected for the same reasons as being set forth above.

#### **Allowable subject matter**

5. Claim 16 is objected to as being dependent upon a rejected based claims, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 17-19 are also allowable since they are depend upon the indicated allowable claim 16.

Serial Number: 09/692,957

Art Unit: 2186

**Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**7. Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Thai whose telephone number is 703-305-3842.

The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays;

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Matthew M. Kim can be reached on (703) 305-3821.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group

Serial Number: 09/692,957

Art Unit: 2186

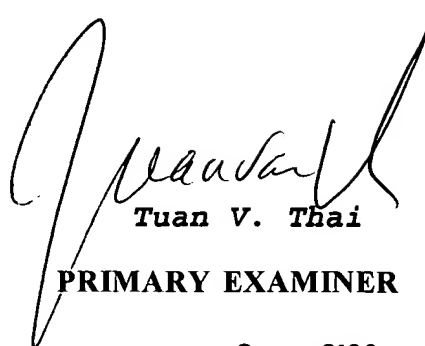
receptionist whose telephone number is (703) 305-3900. The  
Official Fax Numbers for TC-2100 are:

**After-final** (703) 746-7238

**Official** (703) 746-7239

**Non-Official/Draft** (703) 746-7240

TVT/September 27, 2002



**Tuan V. Thai**  
**PRIMARY EXAMINER**  
**Group 2100**